

ITEM: 15

SUBJECT: Planada Community Services District, Wastewater Treatment Facility,
Merced County

BOARD ACTION: *Consideration of Administrative Civil Liability Order*

BACKGROUND: The District owns and operates a WWTF (also POTW) that serves the community of Planada and discharges the effluent to Miles Creek. The State Board has designated the District as a small community with a financial hardship. The Executive Officer, on 2 August 2004, issued a complaint assessing \$255,000 in mandatory minimum penalties pursuant to CWC sections 13385(h) and (i) for 94 acute and chronic violations of BOD₅, TSS, coliform, and chlorine residual effluent limitations in Waste Discharge Requirements Order No. 97-123 (NPDES Permit No. CA0078950) between 1 January 2000 and 30 April 2004.

On 12 January 2004 and 24 August 2004, the Department of Fish and Game and Regional Board staff investigated fish kills in Miles Creek downstream of the District's discharge. As a result of a lawsuit over the fish kills, the District entered into a stipulated settlement agreement with the Merced County District Attorney. The stipulated agreement includes a monetary forfeiture and suspended penalty, and it incorporates the proposed Order by reference, to take effect following adoption.

For a POTW designated by the State Board as a community with a financial hardship, CWC Section 13385(k) allows the Regional Board to suspend all or a portion of the mandatory penalties by requiring such a POTW to spend an equivalent amount towards completion of a compliance project (CP). If the CP is not completed on time and to the satisfaction of the Regional Board, the suspended amount becomes due and payable to the State Water Pollution Cleanup and Abatement Account.

The proposed Order credits the District for the \$95,550 it has expended on mitigation projects it has already completed, such as chlorination and dechlorination controls and remote alarm systems designed to correct violations. In addition, the District proposes a CP with a time schedule to cease discharge to Miles Creek and to reclaim all of the treated effluent on agricultural land. The proposed Order temporarily suspends payment of the remaining \$159,450 as long as the District complies with the time schedule in the proposed Order to cease discharge to Miles Creek, and will permanently suspend the amount provided the District spends at least this amount in good faith progress to implement the CP. The total cost of the project is estimated to be \$1.2 million.

The District reviewed the proposed Order and concurs with it.

Three letters from four persons object to the proposed Order. In general, objections relate to planning or other issues not relevant to the proposed

Order. Respondent letters and Staff responses are included in this agenda item, and the most pertinent topics can be summarized as follows:

1. Any public hearing on the matter should be held in Planada.

The item was appropriately noticed and there is no need for the Regional Board to hold a public hearing in Planada.

2. The item should be continued until litigation regarding Merced County's Planada Community Plan Update is resolved.

Continuance is not necessary or advisable as penalties are mandatory and the proposed Order only acknowledges that the proposed CP is consistent with the CWC; the District must comply with all legal requirements in obtaining permits for the CP; and violations must be addressed within five years.

3. The Regional Board should implement a connection ban.

The proposed Order is limited to historic MMP violations and is not the appropriate legal vehicle for a connection ban.

4. Effluent should not be recycled on farmland.

The proposed recycling project is consistent with State and Regional Board recycling policies.

5. The District project mandates local growth, WWTF expansion, and threatens to force the relocation of a significant portion of Planada's existing migrant community due to increased costs.

The proposed ACL Order only finds the portion of the proposed project associated with the existing WWTF capacity consistent with the CWC. The District must address alleged impacts through the CEQA process associated with its proposed project.

ISSUES:

Issues raised not relevant to the proposed action.

Mgmt. Review_____

Legal Review_____

23/24 June 2005

Central Valley Regional Water Quality Control Board
11020 Sun Center Drive. #200
Rancho Cordova, CA 95670